

Adopted	Rejected
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## COMMITTEE REPORT

YES:	10
NO:	0

### MR. SPEAKER:

*Your Committee on Judiciary, to which was referred House Bill 1287, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1       Page 1, between the enacting clause and line 1, begin a new
- 2       paragraph and insert:
- 3       "SECTION 1. IC 6-4.1-8-5 IS AMENDED TO READ AS
- 4       FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Within ten (10)
- 5       days after life insurance proceeds are paid to a resident decedent's
- 6       estate, the life insurance company shall give notice of the payment to
- 7       the department of state revenue.
- 8       **(b) Not later than ten (10) days after damages payable under a**
- 9       **cause of action maintained by a personal representative under**
- 10      **IC 34-9-3-4 are paid to a resident decedent's estate, the person**
- 11      **making the payment shall give notice of the payment to the**
- 12      **department of state revenue.**
- 13      ~~(b)~~ (c) The department of state revenue shall send a copy of any
- 14      notice which it receives under subsection (a) **or (b)** to the county
- 15      assessor of the county in which the resident decedent was domiciled at
- 16      the time of ~~his~~ **the resident decedent's** death.

SECTION 2. IC 23-14-31-26, AS AMENDED BY P.L.102-2007,  
SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2009]: Sec. 26. (a) Except as provided in subsection (c), the  
following persons, in the priority listed, have the right to serve as an  
authorizing agent:

**(1) An individual granted the authority to serve in a funeral  
planning declaration executed by the decedent under  
IC 29-2-19.**

~~(1)~~ **(2)** An individual ~~who possesses~~ **granted the authority to  
serve in** a health care power of attorney ~~of executed by the~~  
decedent ~~unless the power of attorney prohibits the individual~~  
~~from making plans for the disposition of the decedent's body.~~  
**under IC 30-5-5-16.**

~~(2)~~ **(3)** The individual who was the spouse of the decedent at the  
time of the decedent's death.

~~(3)~~ **(4)** The decedent's surviving adult children. If more than one  
(1) adult child is surviving, any adult child who confirms in  
writing that the other adult children have been notified, unless the  
crematory authority receives a written objection to the cremation  
from another adult child.

~~(4)~~ **(5)** The decedent's surviving parent. If the decedent is  
survived by both parents, either parent may serve as the  
authorizing agent unless the crematory authority receives a  
written objection to the cremation from the other parent.

~~(5)~~ **(6)** The individual in the next degree of kinship under  
IC 29-1-2-1 to inherit the estate of the decedent. If more than one  
(1) individual of the same degree is surviving, any person of that  
degree may serve as the authorizing agent unless the crematory  
authority receives a written objection to the cremation from one  
(1) or more persons of the same degree.

~~(6)~~ **(7)** In the case of an indigent or other individual whose final  
disposition is the responsibility of the state or township, the  
following may serve as the authorizing agent:

(A) If none of the persons identified in subdivisions (1)  
through ~~(5)~~ **of this section (6)** are available:

- (i) a public administrator, including a responsible township  
trustee or the trustee's designee; or
- (ii) the coroner.

1 (B) A state appointed guardian.

2 However, an indigent decedent may not be cremated if a  
3 surviving family member objects to the cremation or if cremation  
4 would be contrary to the religious practices of the deceased  
5 individual as expressed by the individual or the individual's  
6 family.

7 ~~(7)~~ (8) In the absence of any person under subdivisions (1)  
8 through ~~(6)~~, (7), any person willing to assume the responsibility  
9 as the authorizing agent, as specified in this article.

10 (b) When a body part of a nondeceased individual is to be cremated,  
11 a representative of the institution that has arranged with the crematory  
12 authority to cremate the body part may serve as the authorizing agent.

13 (c) If:

14 (1) the death of the decedent appears to have been the result of:

15 (A) murder (IC 35-42-1-1);

16 (B) voluntary manslaughter (IC 35-42-1-3); or

17 (C) another criminal act, if the death does not result from the  
18 operation of a vehicle; and

19 (2) the coroner, in consultation with the law enforcement agency  
20 investigating the death of the decedent, determines that there is a  
21 reasonable suspicion that a person described in subsection (a)  
22 committed the offense;

23 the person referred to in subdivision (2) may not serve as the  
24 authorizing agent.

25 (d) The coroner, in consultation with the law enforcement agency  
26 investigating the death of the decedent, shall inform the crematory  
27 authority of the determination referred to in subsection (c)(2).

28 SECTION 3. IC 23-14-55-2, AS AMENDED BY P.L.3-2008,  
29 SECTION 170, IS AMENDED TO READ AS FOLLOWS  
30 [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Except as provided in  
31 subsection (d), the owner of a cemetery is authorized to inter, entomb,  
32 or inurn the body or cremated remains of a deceased human upon the  
33 receipt of a written authorization of an individual who professes either  
34 of the following:

35 (1) To be (in the priority listed) one (1) of the following:

36 (A) **An individual granted the authority in a funeral**  
37 **planning declaration executed by the decedent under**  
38 **IC 29-2-19.**

~~(A)~~ **(B)** An individual ~~who possesses~~ **granted the authority** in a health care power of attorney ~~of executed by~~ the decedent unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body: **under IC 30-5-5-16.**

~~(B)~~ **(C)** The individual who was the spouse of the decedent at the time of the decedent's death.

~~(C)~~ **(D)** The decedent's surviving adult child. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the owner of the cemetery receives a written objection to the disposition from another adult child.

~~(D)~~ **(E)** The decedent's surviving parent. If the decedent is survived by both parents, either parent unless the cemetery owner receives a written objection to the disposition from the other parent.

~~(E)~~ **(F)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree of kinship is surviving, any person of that degree unless the cemetery owner receives a written objection to the disposition from one (1) or more persons of the same degree of kinship.

(2) To have acquired **by court order** the right to control the disposition of the deceased human body or cremated remains.

The owner of a cemetery may accept the authorization of an individual only if all other individuals of the same priority or a higher priority (according to the priority listing in this subsection) are deceased, are barred from authorizing the disposition of the deceased human body or cremated remains under subsection (d), or are physically or mentally incapacitated from exercising the authorization, and the incapacity is certified to by a qualified medical doctor.

(b) A cemetery owner is not liable in any action for making an interment, entombment, or inurnment under a written authorization described in subsection (a) unless the cemetery owner had actual notice that the representation made under subsection (a) by the individual who issued the written authorization was untrue.

(c) An action may not be brought against the owner of a cemetery relating to the remains of a human that have been left in the possession

of the cemetery owner without permanent interment, entombment, or inurnment for a period of three (3) years, unless the cemetery owner has entered into a written contract for the care of the remains.

(d) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize the disposition of the decedent's body or cremated remains.

(e) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner of the determination referred to in subsection (d)(2).

SECTION 4. IC 25-15-9-18, AS AMENDED BY P.L.3-2008, SECTION 185, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) Except as provided in subsection (b), the following persons, in the order of priority indicated, have the authority to designate the manner, type, and selection of the final disposition and interment of human remains:

**(1) An individual granted the authority in a funeral planning declaration executed by the decedent under IC 29-2-19.**

~~(1) (2) An individual who possesses granted the authority in a health care power of attorney of executed by the decedent unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body: under IC 30-5-5-16.~~

~~(2) (3) The individual who was the spouse of the decedent at the time of the decedent's death.~~

~~(3) (4) The decedent's surviving adult child. If more than one (1) adult child is surviving, any adult child who confirms in writing that the other adult children have been notified, unless the licensed funeral director or licensed funeral home receives a written objection from another adult child.~~

~~(4) (5) The decedent's surviving parent. If the decedent is~~

survived by both parents, either parent has the authority unless the licensed funeral director or licensed funeral home receives a written objection from the other parent.

~~(5)~~ **(6)** The individual in the next degree of kinship under IC 29-1-2-1 to inherit the estate of the decedent. If more than one (1) individual of the same degree survives, any person of that degree has the authority unless the licensed funeral director or licensed funeral home receives a written objection from one (1) or more persons of the same degree.

~~(6)~~ **(7)** In the case of an indigent or other individual whose final disposition is the responsibility of the state or township, the following:

(A) If none of the persons identified in subdivisions (1) through ~~(5)~~ **(6)** is available:

(i) a public administrator, including a responsible township trustee or the trustee's designee; or

(ii) the coroner.

(B) A state appointed guardian.

(b) If:

(1) the death of the decedent appears to have been the result of:

(A) murder (IC 35-42-1-1);

(B) voluntary manslaughter (IC 35-42-1-3); or

(C) another criminal act, if the death does not result from the operation of a vehicle; and

(2) the coroner, in consultation with the law enforcement agency investigating the death of the decedent, determines that there is a reasonable suspicion that a person described in subsection (a) committed the offense;

the person referred to in subdivision (2) may not authorize or designate the manner, type, or selection of the final disposition and internment of human remains.

(c) The coroner, in consultation with the law enforcement agency investigating the death of the decedent, shall inform the cemetery owner or crematory authority of the determination under subsection (b)(2).".

Page 3, between lines 29 and 30, begin a new paragraph and insert:

"SECTION 6. IC 29-1-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **(a)** The surviving

spouse of a decedent who was domiciled in Indiana at ~~his~~ **the**  
**decedent's** death is entitled from the estate to an allowance of  
 twenty-five thousand dollars (\$25,000). ~~The allowance may be claimed~~  
~~against the personal property of the estate or a residence that is a part~~  
~~of the decedent's estate, or a combination of both.~~ If there is no  
 surviving spouse, the decedent's children who are under eighteen (18)  
 years of age at the time of the decedent's death are entitled to the same  
 allowance to be divided equally among them.

**(b) The allowance under subsection (a) may be claimed against:**

**(1) the personal property of the decedent's estate;**

**(2) the real property that is part of the decedent's estate; or**

**(3) a combination of personal property under subdivision (1)  
 and real property under subdivision (2).**

**(c) Not later than ninety (90) days after the order commencing  
 the estate administration, an individual entitled to the allowance  
 may file with the court an election specifying whether the  
 allowance is being claimed under subsection (b) against the  
 personal property of the estate or the real property that is part of  
 the estate, or a combination of both. An interested party may file  
 an objection to the manner in which the allowance is being claimed  
 not later than thirty (30) days after the date the election is filed  
 with the court. The court shall rule on the objection after notice  
 and a hearing. If an election is not filed within ninety (90) days  
 after the order commencing the estate administration, the  
 allowance must be satisfied according to the following order of  
 preference:**

**(1) From the intangible personal property of the estate.**

**(2) From the tangible personal property of the estate.**

**(3) From the real property that is part of the estate.**

**(d) If the personal property ~~and a residence that is a part of the~~  
~~decedent's estate~~ ~~are~~ is less than twenty-five thousand dollars (\$25,000)  
 in value, the spouse or decedent's children who are under eighteen (18)  
 years of age at the time of the decedent's death, as the case may be, are  
 entitled to any real estate of the estate to the extent necessary to make  
 up the difference between the value of the personal property ~~plus the~~  
~~residence that is a part of the decedent's estate~~ and twenty-five  
 thousand dollars (\$25,000). The amount of that difference is a lien on  
 the ~~remaining~~ real estate. **However, no real estate may be sold to****

1 **satisfy the survivor's allowance unless the sale is approved:**

2 **(1) in an agreement signed by all interested persons; or**

3 **(2) by court order following notice to all interested persons.**

4 **(e)** An allowance under this section is not chargeable against the  
5 distributive shares of either the surviving spouse or the children.

6 **(f) For purposes of this section, the value of the real property**  
7 **that is part of a decedent's estate must be determined as of the date**  
8 **of the decedent's death.**

9 SECTION 7. IC 29-1-7-7, AS AMENDED BY P.L.95-2007,  
10 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2009]: Sec. 7. (a) As soon as letters testamentary or of  
12 administration, general or special, supervised or unsupervised, have  
13 been issued, the clerk of the court shall publish notice of the estate  
14 administration.

15 (b) The notice required under subsection (a) shall be published in  
16 a newspaper of general circulation, printed in the English language and  
17 published in the county where the court is located, once each week for  
18 two (2) consecutive weeks. A copy of the notice, with proof of  
19 publication, shall be filed with the clerk of the court as a part of the  
20 administration of the estate within thirty (30) days after the publication.  
21 If no newspaper is published in the county, the notice shall be  
22 published in a newspaper published in an adjacent county.

23 (c) The notice required under subsection (a) shall be served by  
24 ~~certified~~ **first class postage prepaid** mail on each heir, devisee,  
25 legatee, and known creditor whose name and address is set forth in the  
26 petition for probate or letters, **except as otherwise ordered by the**  
27 **court.** The personal representative shall furnish sufficient copies of the  
28 notice, prepared for mailing, and the clerk of the court shall mail the  
29 notice upon the issuance of letters.

30 (d) The personal representative or the personal representative's  
31 agent shall serve notice on each creditor of the decedent:

32 (1) whose name is not set forth in the petition for probate or  
33 letters under subsection (c);

34 (2) who is known or reasonably ascertainable within one (1)  
35 month after the first publication of notice under subsection (a);  
36 and

37 (3) whose claim has not been paid or settled by the personal  
38 representative.



The notice may be served by mail or any other means reasonably calculated to ensure actual receipt of the notice by a creditor.

(e) Notice under subsection (d) shall be served within one (1) month after the first publication of notice under subsection (a) or as soon as possible after the elapse of one (1) month. If the personal representative or the personal representative's agent fails to give notice to a known or reasonably ascertainable creditor of the decedent under subsection (d) within one (1) month after the first publication of notice under subsection (a), the period during which the creditor may submit a claim against the estate includes an additional period ending two (2) months after the date notice is given to the creditor under subsection (d). However, a claim filed under IC 29-1-14-1(a) more than nine (9) months after the death of the decedent is barred.

(f) A schedule of creditors that received notice under subsection (d) shall be delivered to the clerk of the court as soon as possible after notice is given.

(g) The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an admission by the personal representative that the creditor has an allowable claim against the estate.

(h) If any person entitled to receive notice under this section is under a legal disability, the notice may be served upon or waived by the person's natural or legal guardian or by the person who has care and custody of the person.

(i) The notice shall read substantially as follows:

#### NOTICE OF ADMINISTRATION

In the \_\_\_\_\_ Court of \_\_\_\_\_ County, Indiana.

Notice is hereby given that \_\_\_\_\_ was, on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, appointed personal representative of the estate of \_\_\_\_\_, deceased, who died on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

All persons who have claims against this estate, whether or not now due, must file the claim in the office of the clerk of this court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at \_\_\_\_\_, Indiana, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

\_\_\_\_\_  
CLERK OF THE \_\_\_\_\_ COURT

FOR \_\_\_\_\_ COUNTY, INDIANA

SECTION 8. IC 29-1-7.5-1.5, AS AMENDED BY P.L.238-2005,  
SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2009]: Sec. 1.5. (a) As soon as letters testamentary or letters  
of administration have been issued, the clerk of the court shall serve by  
mail notice of the petition on each of the decedent's heirs at law, if the  
decedent died intestate, or the devisees and legatees under the  
decedent's will. The mailing of notice under this subsection may not be  
waived.

(b) The notice required under subsection (a) shall read substantially  
as follows:

NOTICE OF UNSUPERVISED ADMINISTRATION TO BE  
MAILED TO A DISTRIBUTEE

In the \_\_\_\_\_ Court of \_\_\_\_\_ County, Indiana.

Notice is hereby given that \_\_\_\_\_, on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_, was appointed as the personal representative of the  
estate of \_\_\_\_\_, who died on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_, {leaving a will} {not leaving a will}. The estate will be  
administered without court supervision.

As an heir, a devisee, or a legatee of the estate (a "distributee"), you  
are advised of the following information:

(1) The personal representative has the authority to take actions  
concerning the estate without first consulting you.

(2) The personal representative may be serving without posting a  
bond with the court. You have the right to petition the court to set  
a bond for your protection. **You also have the right to petition  
the court to remove a corporate personal representative not  
later than thirty (30) days after this notice if the ownership or  
control of the corporate personal representative has changed  
since the execution of the decedent's will.**

(3) The personal representative will not obtain court approval of  
any action, including the amount of attorney's or personal  
representative's fees.

(4) Within two (2) months after the appointment of the personal  
representative, the personal representative must prepare an  
inventory of the estate's assets. You have the right to request and  
receive a copy of this inventory from the personal representative.  
However, if you do not participate in the residue of the estate and

1 receive only a specific bequest in money or personal property that  
 2 will be paid, you are entitled only to the information concerning  
 3 your specific bequest and not to the assets of the estate as a  
 4 whole.

5 (5) The personal representative is required to furnish you with a  
 6 copy of the closing statement that will be filed with the court, and,  
 7 if your interests are affected, with a full account in writing of the  
 8 administration of the estate.

9 (6) You must file an objection to the closing statement within  
 10 three (3) months after the closing statement is filed with the court  
 11 if you want the court to consider your objection.

12 (7) If an objection to the closing statement is not filed with the  
 13 court within three (3) months after the filing of the closing  
 14 statement, the estate is closed and the court does not have a duty  
 15 to audit or make an inquiry.

16 IF, AT ANY TIME BEFORE THE ESTATE IS CLOSED, YOU  
 17 HAVE REASON TO BELIEVE THAT THE ADMINISTRATION OF  
 18 THE ESTATE SHOULD BE SUPERVISED BY THE COURT, YOU  
 19 HAVE THE RIGHT TO PETITION THE COURT FOR SUPERVISED  
 20 ADMINISTRATION.

21 IF YOU DO NOT UNDERSTAND THIS NOTICE, YOU SHOULD  
 22 ASK YOUR ATTORNEY TO EXPLAIN IT TO YOU.

23 The personal representative's address is \_\_\_\_\_, and  
 24 telephone number is \_\_\_\_\_. The attorney for the personal  
 25 representative is \_\_\_\_\_, whose address is  
 26 \_\_\_\_\_ and telephone number is \_\_\_\_\_.

27 Dated at \_\_\_\_\_, Indiana, this \_\_\_\_\_ day of  
 28 \_\_\_\_\_, 20\_\_.

29 CLERK OF THE \_\_\_\_\_ COURT

30 SECTION 9. IC 29-1-10-6 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. **(a) This section**  
 32 **does not apply to the removal of a corporate fiduciary after a**  
 33 **change in control of the corporate fiduciary.**

34 **(b)** When the personal representative becomes incapacitated (unless  
 35 the incapacity is caused only by a physical illness, infirmity, or  
 36 impairment), disqualified, unsuitable or incapable of discharging the  
 37 representative's duties, has mismanaged the estate, failed to perform  
 38 any duty imposed by law or by any lawful order of the court, or has

1       ceased to be domiciled in Indiana, the court may remove the  
 2       representative ~~as provided:~~ **in accordance with either of the**  
 3       **following:**

4           ~~(a)~~ **(1)** The court on its own motion may, or on petition of any  
 5           person interested in the estate shall, order the representative to  
 6           appear and show cause why the representative should not be  
 7           removed. ~~Such~~ **The** order shall set forth in substance the alleged  
 8           grounds upon which such removal is based, the time and place of  
 9           the hearing, and may be served upon the personal representative  
 10          in the same manner as a notice is served under this article.

11          ~~(b)~~ **(2)** The court may without motion, petition or application, for  
 12          any such cause, in cases of emergency, remove such personal  
 13          representative instantly without notice or citation.

14          **(c)** The removal of a personal representative after letters are duly  
 15          issued does not invalidate official acts performed prior to removal.

16          SECTION 10. IC 29-1-10-6.5 IS ADDED TO THE INDIANA  
 17          CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 18          [EFFECTIVE JULY 1, 2009]: **Sec. 6.5. (a) This section does not**  
 19          **apply to the removal of a personal representative under section 6**  
 20          **of this chapter.**

21          **(b) An heir may petition the court for the removal of a**  
 22          **corporate fiduciary appointed by the court as personal**  
 23          **representative if there has been a change in the control of the**  
 24          **corporate fiduciary and either of the following applies:**

25           **(1) The change in the control of the corporate fiduciary**  
 26           **occurred after the date of the execution of the decedent's will**  
 27           **but before the decedent's death.**

28           **(2) The change in the control of the corporate fiduciary**  
 29           **occurred after the corporate fiduciary was appointed and**  
 30           **during the administration of the decedent's estate.**

31          **(c) A petition described in subsection (b) must be filed:**

32           **(1) not later than thirty (30) days after an heir, a devisee, or**  
 33           **a legatee receives notice under IC 29-1-7-7(c) or**  
 34           **IC 29-1-7.5-1.5, in the case of a change of control described in**  
 35           **subsection (b)(1); or**

36           **(2) not later than a reasonable time after the change of**  
 37           **control, in the case of a change of control described in**  
 38           **subsection (b)(2).**

(d) The court may remove the corporate fiduciary if the court determines, after a hearing, that the removal is in the best interests of all the beneficiaries of the will. The court may replace the corporate fiduciary with another corporate fiduciary or an individual.

(e) For purposes of this section, a change in control of a corporate fiduciary occurs whenever a person or group of persons acting in concert acquires the beneficial ownership of a total of at least twenty-five percent (25%) of the outstanding voting stock of:

(1) a corporate fiduciary; or

(2) a corporation controlling a corporate fiduciary.

(f) The removal of a corporate fiduciary after letters are duly issued does not invalidate official acts performed before the removal.

(g) If a corporate fiduciary is replaced under this section, the corporate fiduciary is entitled to receive reasonable compensation for services rendered before the removal.

SECTION 11. IC 29-2-19 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

#### **Chapter 19. Funeral Planning Declaration**

**Sec. 1.** As used in this chapter, "declarant" means an individual who signs a funeral planning declaration executed under this chapter.

**Sec. 2.** As used in this chapter, "declaration" means a funeral planning declaration executed under this chapter.

**Sec. 3.** As used in this chapter, "designee" means an individual directed by the terms of a declaration to:

(1) carry out the funeral plan of the declarant as set forth in the declaration; or

(2) make any arrangements concerning the disposition of the declarant's remains, funeral services, merchandise, and ceremonies that are delegated to the designee in the declaration.

**Sec. 4.** As used in this chapter, "disposition" has the meaning set forth in IC 25-15-2-7.

**Sec. 5.** As used in this chapter, "funeral services" has the meaning set forth in IC 25-15-2-17.

1       **Sec. 6. As used in this chapter, "grave memorial" has the**  
 2       **meaning set forth in IC 14-21-2-2.**

3       **Sec. 7. As used in this chapter, "merchandise" refers to personal**  
 4       **property described in IC 30-2-13-8.**

5       **Sec. 8. (a) A person who is of sound mind and is at least eighteen**  
 6       **(18) years of age may execute a funeral planning declaration**  
 7       **substantially in the form set forth in section 13 of this chapter. A**  
 8       **declaration may be included in a will, a power of attorney, or a**  
 9       **similar document.**

10       **(b) A declaration must meet the following conditions:**

11           **(1) Be voluntary.**

12           **(2) Be in writing.**

13           **(3) Direct an individual to serve as the declarant's designee.**

14           **(4) Be signed by the person making the declaration or by**  
 15           **another person in the declarant's presence and at the**  
 16           **direction of the declarant.**

17           **(5) Be dated.**

18           **(6) Be signed in the presence of at least two (2) competent**  
 19           **witnesses who are at least eighteen (18) years of age.**

20       **(c) The following may not be a witness to a declaration under**  
 21       **subsection (b)(6):**

22           **(1) The person who signed the declaration on behalf of and at**  
 23           **the direction of the declarant.**

24           **(2) A parent, spouse, or child of the declarant.**

25           **(3) An individual who is entitled to any part of the declarant's**  
 26           **estate whether the declarant dies testate or intestate,**  
 27           **including an individual who could take from the declarant's**  
 28           **estate if the declarant's will is declared invalid.**

29       **For purposes of subdivision (3), a person is not considered to be**  
 30       **entitled to any part of the declarant's estate solely by virtue of**  
 31       **being nominated as a personal representative or as the attorney for**  
 32       **the estate in the declarant's will.**

33       **(d) A declaration is not binding upon a funeral home, a**  
 34       **cemetery, any other person engaged in the business of providing**  
 35       **funeral services, any other person selling merchandise or grave**  
 36       **markers, or any other person providing a service or other property**  
 37       **subject to the declaration until the person receives consideration**  
 38       **for the service, merchandise, or other property.**

1       (e) Except as provided in subsection (f), a declarant may not  
2       direct an individual who is:

3           (1) a provider of funeral services;

4           (2) responsible for any aspect of the disposition of the  
5           declarant's remains; or

6           (3) associated with any entity that is responsible for providing  
7           funeral services or disposing of the declarant's remains;  
8       to be the declarant's designee in a declaration executed under this  
9       chapter.

10       (f) Subsection (e) does not apply to an individual who is related  
11       to the declarant by birth, marriage, or adoption.

12       Sec. 9. A declaration may specify the declarant's preferences  
13       concerning any of the following:

14           (1) The disposition of the declarant's remains after the  
15           declarant's death.

16           (2) Who may direct the disposition of the declarant's remains.

17           (3) Who may provide funeral services after the declarant's  
18           death.

19           (4) The ceremonial arrangements to be performed after the  
20           declarant's death.

21           (5) The merchandise that the declarant prefers for the  
22           disposition of the declarant's remains and any ceremonial  
23           arrangements.

24           (6) Who may direct the ceremonial arrangements to be  
25           performed after the declarant's death.

26           (7) A grave memorial.

27       Sec. 10. (a) Except as provided in subsection (b), the provisions  
28       of a declarant's most recent declaration prevail over any other  
29       document executed by the declarant concerning any preferences  
30       described in section 9 of this chapter. However, this section may  
31       not be construed to invalidate a power of attorney executed under  
32       IC 30-5-5 or an appointment of a health care representative under  
33       IC 16-36-1 with respect to any power or duty belonging to the  
34       attorney in fact or health care representative that is not related to  
35       a preference described in section 9 of this chapter.

36       (b) A funeral trust established under IC 30-2-9 or IC 30-2-10 or  
37       a contract entered into under IC 30-2-13 prevails over a  
38       declaration that conflicts with the trust or contract.

1        **Sec. 11. (a) A person who acts in good faith reliance on a**  
 2        **declaration is immune from liability to the same extent as if the**  
 3        **person had dealt directly with the declarant and the declarant had**  
 4        **been a competent and living person.**

5        **(b) A person who deals with a declaration may presume, in the**  
 6        **absence of actual knowledge to the contrary, that:**

7                **(1) the declaration was validly executed; and**

8                **(2) the declarant was competent at the time the declaration**  
 9                **was executed.**

10        **(c) The directions of a declarant expressed in a declaration are**  
 11        **binding as if the declarant were alive and competent.**

12        **Sec. 12. A declaration must be substantially in the form set forth**  
 13        **in section 13 of this chapter, but the declaration may include**  
 14        **additional, specific directions. The invalidity of any additional,**  
 15        **specific direction does not affect the validity of the declaration.**

16        **Sec. 13. The following is the funeral planning declaration form:**

17                        **FUNERAL PLANNING DECLARATION**

18        **Declaration made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year). I,**  
 19        **\_\_\_\_\_, being at least eighteen (18) years of age and of sound**  
 20        **mind, willfully and voluntarily make known my instructions**  
 21        **concerning funeral services, ceremonies, and the disposition of my**  
 22        **remains after my death.**

23        **I hereby declare and direct that after my death**  
 24        **\_\_\_\_\_ (name of designee) shall, as my designee,**  
 25        **carry out the instructions that are set forth in this declaration. If**  
 26        **my designee is unwilling or unable to act, I nominate \_\_\_\_\_**  
 27        **as an alternate designee.**

28        **I hereby declare and direct that after my death the following**  
 29        **actions be taken (indicate your choice by initialing or making your**  
 30        **mark before signing this declaration):**

31                **(1) My body shall be:**

32                        **(A) \_\_\_\_\_ Buried. I direct that my body be**  
 33                        **buried at \_\_\_\_\_.**

34                        **(B) \_\_\_\_\_ Cremated. I direct that my cremated**  
 35                        **remains be disposed of as follows:**

36                        \_\_\_\_\_  
 37                        \_\_\_\_\_

38                        **(C) \_\_\_\_\_ Entombed. I direct that my body be**



- 1 entombed at \_\_\_\_\_.
- 2 (D) \_\_\_\_\_ I intentionally make no decision
- 3 concerning the disposition of my body, leaving the decision
- 4 to my designee (as named above).
- 5 (2) My arrangements shall be made as follows:
- 6 (A) I direct that funeral services be obtained from:
- 7 \_\_\_\_\_
- 8 \_\_\_\_\_
- 9 (B) I direct that the following ceremonial arrangements be
- 10 made:
- 11 \_\_\_\_\_
- 12 \_\_\_\_\_
- 13 (C) I direct the selection of a grave memorial that:
- 14 \_\_\_\_\_
- 15 \_\_\_\_\_
- 16 (D) I direct that the following merchandise and other
- 17 property be selected for the disposition of my remains, my
- 18 funeral or other ceremonial arrangements:
- 19 \_\_\_\_\_
- 20 \_\_\_\_\_
- 21 \_\_\_\_\_
- 22 \_\_\_\_\_
- 23 (E) \_\_\_\_\_ I direct that my designee (as
- 24 named above) make all arrangements concerning
- 25 ceremonies and other funeral services.
- 26 (3) In addition to the instructions listed above, I request the
- 27 following:
- 28 \_\_\_\_\_
- 29 \_\_\_\_\_
- 30 (4) If it is impossible to make an arrangement specified in
- 31 subdivisions (1) through (3) because:
- 32 (A) a funeral home or other service provider is out of
- 33 business, impossible to locate, or otherwise unable to
- 34 provide the specified service; or
- 35 (B) the specified arrangement is impossible, impractical, or
- 36 illegal;
- 37 I direct my designee to make alternate arrangements to the
- 38 best of the designee's ability.

**Signed** \_\_\_\_\_  
 \_\_\_\_\_  
**City, County, and State of Residence**

**Witness** \_\_\_\_\_ **Date** \_\_\_\_\_

**Witness** \_\_\_\_\_ **Date** \_\_\_\_\_

**Sec. 15. Except as otherwise expressly provided in a declaration, a subsequent:**

- automatically revokes a delegation of authority in a declaration to the declarant's spouse to direct the disposition of the declarant's body or to make all arrangements concerning funeral services and other ceremonies after the declarant's death.**

**Sec. 17. The right to control the disposition of a decedent's body, to make arrangements for funeral services, and to make other ceremonial arrangements after an individual's death devolves on the following, in the priority listed:**

- 2009

1           **declaration executed by the decedent under this chapter.**

2           **(2) An individual granted the authority in a health care power**  
 3           **of attorney executed by the decedent under IC 30-5-5-16.**

4           **(3) The decedent's surviving spouse.**

5           **(4) A surviving adult child of the decedent.**

6           **(5) A surviving parent of the decedent.**

7           **(6) An individual in the next degree of kinship under**  
 8           **IC 29-1-2-1 to inherit the estate of the decedent.**

9           **Sec. 18. A person in Indiana may rely on a declaration or**  
 10          **similar instrument that was executed in another state and that**  
 11          **complies with the requirements of this chapter to the extent that an**  
 12          **action requested by the declarant in the declaration or similar**  
 13          **instrument does not violate any federal or Indiana law or any**  
 14          **ordinance or regulation of a political subdivision.**

15          **Sec. 19. An action to contest the validity of any declaration**  
 16          **made under this chapter must be:**

17           **(1) brought in the same manner as an action to contest the**  
 18           **validity of a will under IC 29-1-7;**

19           **(2) filed in the circuit court of the county in which the**  
 20           **declarant's remains are located;**

21           **(3) expedited on the docket of the circuit court as a matter**  
 22           **requiring priority; and**

23           **(4) accompanied by a bond, cash deposit, or other surety**  
 24           **sufficient to guarantee that the hospital, nursing home,**  
 25           **funeral home, or other institution holding the declarant's**  
 26           **remains is compensated for the storage charges incurred**  
 27           **while the action is pending.**

28          **SECTION 12. IC 29-3-6-1, AS AMENDED BY P.L.95-2007,**  
 29          **SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**  
 30          **JULY 1, 2009]: Sec. 1. (a) When a petition for appointment of a**  
 31          **guardian or for the issuance of a protective order is filed with the court,**  
 32          **notice of the petition and the hearing on the petition shall be given by**  
 33          **~~certified~~ first class postage prepaid mail as follows:**

34           **(1) If the petition is for the appointment of a successor guardian,**  
 35           **notice shall be given unless the court, for good cause shown,**  
 36           **orders that notice is not necessary.**

37           **(2) If the petition is for the appointment of a temporary guardian,**  
 38           **notice shall be given as required by IC 29-3-3-4(a).**

(3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The minor, if at least fourteen (14) years of age, unless the minor has signed the petition.

(B) Any living parent of the minor, unless parental rights have been terminated by a court order.

(C) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the filing of the petition.

(D) Any other person that the court directs.

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(B) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.

(C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

(1) The guardian.

(2) Any other persons that the court directs, including the following:

1 (A) Any department, bureau, agency, or political subdivision  
 2 of the United States or of this state that makes or awards  
 3 compensation, pension, insurance, or other allowance for the  
 4 benefit of an alleged incapacitated person.

5 (B) Any department, bureau, agency, or political subdivision  
 6 of this state that may be charged with the supervision, control,  
 7 or custody of an alleged incapacitated person.

8 SECTION 13. IC 29-3-8-6.5 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.5. (a) If:

10 (1) a guardian takes possession of property that is:

11 (A) jointly owned by or titled in the names of the protected  
 12 person and another person with rights of survivorship; **or**

13 **(B) owned as a multiple party account with another person**  
 14 **as joint owner or beneficiary;**

15 (2) the guardian:

16 (A) severs the joint ownership of the property; **or**

17 **(B) uses the assets of the multiple party account;** and

18 (3) the protected person subsequently dies while the other person  
 19 is living;

20 the other person may elect to receive from the protected person's estate  
 21 property in an amount determined under subsection (b).

22 (b) The amount of property the other person described in subsection  
 23 (a) may elect to receive is determined in STEP THREE of the following  
 24 formula:

25 STEP ONE: Subtract:

26 (A) the value of the severed **or used** property retained by the  
 27 other person at the time ownership was severed **or used**, if  
 28 any; from

29 (B) the value of the joint property **or multiple party account**  
 30 at the time ownership was severed **or the assets were used.**

31 STEP TWO: Divide:

32 (A) the remainder determined under STEP ONE; by

33 (B) the value of the protected person's property, including the  
 34 jointly held property **or multiple party account**, at the time  
 35 ownership was severed **or the assets were used.**

36 STEP THREE: Multiply:

37 (A) the quotient determined under STEP TWO; by

38 (B) the value of the deceased protected person's net estate.

(c) As used in this section, "multiple party account" refers to both multiple party accounts described by IC 32-17-11 and transfer on death securities described by IC 32-17-9."

Page 4, between lines 25 and 26, begin a new paragraph and insert:

"SECTION 14. IC 30-5-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. "Attorney in fact" means the person designated to act for the principal under a power of attorney. **The term includes any of the following:**

(1) **The original attorney in fact.**

(2) **A co-attorney in fact.**

(3) **A successor attorney in fact.**

(4) **A person to whom an attorney in fact has delegated authority.**

SECTION 15. IC 30-5-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. "Person" means:

(1) an individual at least eighteen (18) years of age;

(2) a corporation;

(3) a trust;

(4) a limited liability company; ~~or~~

(5) a partnership;

(6) a business trust;

(7) an estate;

(8) an association;

(9) a joint venture;

(10) a government or political subdivision;

(11) an agency;

(12) an instrumentality; or

(13) any other legal or commercial entity.

SECTION 16. IC 30-5-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. "Power of attorney"

means a writing or other record that grants authority to an attorney in fact or agent to act in place of a principal, whether the term "power of attorney" is used. The term refers to all types of powers of attorney, including durable powers of attorney, **except for the following:**

(1) **A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a credit in connection with a credit transaction.**

1           **(2) A proxy or other delegation to exercise voting rights or**  
 2           **management rights with respect to an entity.**

3           **(3) A power created on a form prescribed by a government or**  
 4           **governmental subdivision, agency, or instrumentality for a**  
 5           **governmental purpose.**

6           SECTION 17. IC 30-5-3-2 IS AMENDED TO READ AS  
 7           FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. A power of attorney  
 8           is valid if the power of attorney was valid at the time the power of  
 9           attorney was executed under any of the following:

10           (1) This article.

11           (2) IC 30-2-11 (**repealed**).

12           (3) Common law.

13           (4) The law of another state or foreign country.

14           **(5) The requirements for a military power of attorney under**  
 15           **10 U.S.C. 1044b.**

16           SECTION 18. IC 30-5-3-6 IS ADDED TO THE INDIANA CODE  
 17           AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 18           1, 2009]: **Sec. 6. The meaning and effect of a power of attorney are**  
 19           **determined by the law of the jurisdiction indicated in the power of**  
 20           **attorney. In the absence of an indication of jurisdiction, the**  
 21           **meaning and effect of a power of attorney are determined by the**  
 22           **law of the jurisdiction in which the power of attorney was**  
 23           **executed.**

24           SECTION 19. IC 30-5-3-7 IS ADDED TO THE INDIANA CODE  
 25           AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 26           1, 2009]: **Sec. 7. This article modifies, limits, and supersedes the**  
 27           **Electronic Signatures in Global and National Commerce Act (15**  
 28           **U.S.C. 7001 et seq.). However, this article does not:**

29           **(1) modify, limit, or supersede 15 U.S.C. 7001(c); or**

30           **(2) authorize the electronic delivery of a notice described in 15**  
 31           **U.S.C. 7003(b).**

32           SECTION 20. IC 30-5-4-2, AS AMENDED BY P.L.101-2008,  
 33           SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34           JULY 1, 2009]: Sec. 2. (a) Except as provided in subsection (b), a  
 35           power of attorney is effective on the date the power of attorney is  
 36           signed in accordance with section 1(4) of this chapter.

37           (b) A power of attorney may:

38           (1) specify the date on which the power will become effective; or

(2) become effective upon the occurrence of an event.

**(c) If a power of attorney becomes effective upon the principal's incapacity and:**

**(1) the principal has not authorized a person to determine whether the principal is incapacitated; or**

**(2) the person authorized is unable or unwilling to make the determination;**

**the power of attorney becomes effective upon a determination that the principal is incapacitated that is set forth in a writing or other record by a physician, licensed psychologist, or judge.**

**(d) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may:**

**(1) act as the principal's personal representative under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 201 et seq.) and any rules or regulations issued under that act; and**

**(2) obtain access to the principal's health care information and communicate with the principal's health care provider.**

SECTION 21. IC 30-5-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Except as stated otherwise in the power of attorney, an attorney in fact fails to serve or ceases to serve when:

(1) the attorney in fact dies;

(2) the attorney in fact resigns;

(3) the attorney in fact is adjudged incapacitated by a court;

(4) the attorney in fact cannot be located upon reasonable inquiry;

(5) the attorney in fact, if at one time the principal's spouse, legally is no longer the principal's spouse; or

(6) a physician familiar with the condition of the current attorney in fact certifies in writing to the immediate successor attorney in fact that the current attorney in fact is unable to transact a significant part of the business required under the power of attorney.

(b) Except as stated otherwise in the power of attorney, if the replaced attorney in fact reappears or is subsequently able to transact business, the successor attorney in fact shall remain as the attorney in fact.

(c) Except as otherwise stated in the power of attorney, an attorney



in fact designated as a successor has the powers granted under the power of attorney to the original attorney in fact.

**(d) Unless a power of attorney provides a different method for an attorney in fact's resignation, an attorney in fact may resign by giving notice to the principal, and, if the principal is incapacitated:**

**(1) to:**

**(A) the principal's guardian, if a guardian has been appointed for the principal; and**

**(B) a co-attorney in fact or successor attorney in fact; or**

**(2) if there is no person described in subdivision (1), to:**

**(A) the principal's care giver;**

**(B) another person reasonably believed by the attorney in fact to have sufficient interest in the principal's welfare; or**

**(C) a governmental agency having authority to protect the welfare of the principal.**

SECTION 22. IC 30-5-5-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 7.5. (a) Language conferring general authority with respect to transfer on death or payable on death transfers means the principal authorizes the attorney in fact to do the following:**

**(1) Establish one (1) or more transfer on death transfers or payable on death transfers.**

**(2) Designate, amend, remove, modify, or change any designation of beneficiary in a transfer on death transfer or payable on death transfer, including those created by the principal before or after the execution of the power of attorney.**

**(3) Terminate any transfer on death transfer or payable on death transfer.**

**(4) Add to or withdraw from any transfer on death transfer or payable on death transfer.**

**(5) Exercise any right or authority that the principal may have in a transfer on death transfer or payable on death transfer during the principal's lifetime.**

**(b) The powers described in this section are equally exercisable with respect to transfer on death transfers and payable on death transfers that are established or operated in Indiana or another jurisdiction.**

1        **(c) A power of attorney that is executed before July 1, 2009, and**  
 2        **that confers general authority with respect to all other matters**  
 3        **under section 19 of this chapter also confers general authority with**  
 4        **respect to transfer on death transfers and payable on death**  
 5        **transfers as described in this section.**

6        SECTION 23. IC 30-5-5-16 IS AMENDED TO READ AS  
 7        FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) This section  
 8        does not prohibit an individual capable of consenting to the individual's  
 9        own health care or to the health care of another from consenting to  
 10       health care administered in good faith under the religious tenets and  
 11       practices of the individual requiring health care.

12       (b) Language conferring general authority with respect to health  
 13       care powers means the principal authorizes the attorney in fact to do  
 14       the following:

15       (1) Employ or contract with servants, companions, or health care  
 16       providers to care for the principal.

17       (2) If the attorney in fact is an individual, consent to or refuse  
 18       health care for the principal who is an individual in accordance  
 19       with IC 16-36-4 and IC 16-36-1 by properly executing and  
 20       attaching to the power of attorney a declaration or appointment,  
 21       or both.

22       (3) Admit or release the principal from a hospital or health care  
 23       facility.

24       (4) Have access to records, including medical records, concerning  
 25       the principal's condition.

26       (5) Make anatomical gifts on the principal's behalf.

27       (6) Request an autopsy.

28       (7) Make plans for the disposition of the principal's body,  
 29       **including executing a funeral planning declaration on behalf**  
 30       **of the principal in accordance with IC 29-2-19.**

31       SECTION 24. IC 30-5-9-11 IS ADDED TO THE INDIANA CODE  
 32       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 33       1, 2009]: **Sec. 11. An attorney in fact that violates this article is**  
 34       **liable to the principal or the principal's successors in interest for**  
 35       **damages and an amount required to reimburse the principal or the**  
 36       **principal's successors in interest for the attorney's fees and costs**  
 37       **paid as a result of the violation.**

38       SECTION 25. IC 30-5-10-0.5 IS ADDED TO THE INDIANA

CODE AS A NEW SECTION TO READ AS FOLLOWS  
 [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. Unless the power of attorney provides otherwise, an attorney in fact may exercise authority until the authority terminates under this chapter, even if time has passed since the execution of the power of attorney.**

SECTION 26. IC 32-17-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. This chapter applies to registrations of securities:

(1) in beneficiary form ~~regardless of the date of registration; that~~  
**are made before July 1, 2009;** and

(2) by persons who die after June 30, 1997.

SECTION 27. IC 32-17-11-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.5. (a) This chapter applies to a P.O.D. account established before July 1, 2009.**

**(b) A P.O.D. account established after June 30, 2009, is subject to IC 32-17-14.**

SECTION 28. IC 32-17-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) As used in this chapter, "nonprobate transfer" means a valid transfer, effective at death, by a transferor:

(1) whose last domicile was in Indiana; and

(2) who immediately before death had the power, acting alone, to prevent transfer of the property by revocation or withdrawal and:

(A) use the property for the benefit of the transferor; or

(B) apply the property to discharge claims against the transferor's probate estate.

The term does not include transfer of a survivorship interest in a tenancy by the entireties real estate, transfer of a life insurance policy or annuity, or payment of the death proceeds of a life insurance policy or annuity.

(b) With respect to a security ~~described in~~ **registered:**

**(1) under IC 32-17-9 (in the case of a security registered before July 1, 2009); or**

**(2) under IC 32-17-14 (in the case of a security registered after June 30, 2009);**

"nonprobate transfer" means a transfer on death resulting from a registration in beneficiary form by an owner whose last domicile was

1 in Indiana.

2 (c) With respect to a nonprobate transfer involving a multiple party  
3 account, a nonprobate transfer occurs if the last domicile of the  
4 depositor whose interest is transferred under IC 32-17-11 **(in the case**  
5 **of an account established before July 1, 2009) or IC 32-17-14 (in**  
6 **the case of an account established after June 30, 2009)** was in  
7 Indiana.

8 (d) **With respect to a motor vehicle or a watercraft, a**  
9 **nonprobate transfer occurs if the transferee obtains a certificate of**  
10 **title in Indiana for:**

11 (1) **the motor vehicle under IC 9-17-2-2(b); or**

12 (2) **the watercraft as required by IC 9-31-2-16(a)(1)(C).**

13 (e) **A transfer on death transfer completed under IC 32-17-14 is**  
14 **a nonprobate transfer.**

15 SECTION 29. IC 32-17-14 IS ADDED TO THE INDIANA CODE  
16 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2009]:

18 **Chapter 14. Transfer on Death Property Act**

19 **Sec. 1. This chapter may be cited as the Transfer on Death**  
20 **Property Act.**

21 **Sec. 2. (a) This chapter applies to property subject to a**  
22 **beneficiary designation made after June 30, 2009.**

23 **(b) Subject to section 32 of this chapter, this chapter applies to**  
24 **a transfer on death transfer if at the time the owner designated the**  
25 **beneficiary:**

26 (1) **the owner was a resident of Indiana;**

27 (2) **the property subject to the beneficiary designation was**  
28 **situated in Indiana;**

29 (3) **the obligation to pay or deliver arose in Indiana;**

30 (4) **the transferring entity was a resident of Indiana or had a**  
31 **place of business in Indiana; or**

32 (5) **the transferring entity's obligation to make the transfer**  
33 **was accepted in Indiana.**

34 (c) **Except for section 24 of this chapter, this chapter does not**  
35 **apply to property, money, or benefits paid or transferred at death**  
36 **under a life or accidental death insurance policy, annuity, contract,**  
37 **plan, or other product sold or issued by a life insurance company**  
38 **unless the provisions of this chapter are incorporated into the**

1 policy or beneficiary designation in whole or in part by express  
2 reference.

3 (d) Except for section 24 of this chapter, this chapter does not  
4 apply to a transfer on death transfer if the beneficiary designation  
5 or an applicable law expressly provides that this chapter does not  
6 apply to the transfer.

7 (e) This chapter does not apply to beneficiary designations that  
8 are subject to the following:

9 (1) IC 9-17-3-9 (for motor vehicles).

10 (2) IC 9-31-2-30 (for watercraft).

11 (3) IC 32-17-9 (for securities registered before July 1, 2009,  
12 under the Indiana Uniform Act on Transfer on Death  
13 Securities).

14 (4) IC 32-17-11 (for pay on death accounts established before  
15 July 1, 2009).

16 **Sec. 3. The following definitions apply throughout this chapter:**

17 (1) "Beneficiary" means a person designated or entitled to  
18 receive property because of another person's death under a  
19 transfer on death transfer.

20 (2) "Beneficiary designation" means a written instrument  
21 other than a will or trust that designates the beneficiary of a  
22 transfer on death transfer.

23 (3) "Joint owners" refers to persons who hold property as  
24 joint tenants with a right of survivorship. However, the term  
25 does not include a husband and wife who hold property as  
26 tenants by the entirety.

27 (4) "LDPS" means an abbreviation of lineal descendants per  
28 stirpes, which may be used in a beneficiary designation to  
29 designate a substitute beneficiary as provided in section 22 of  
30 this chapter.

31 (5) "Owner" refers to a person or persons who have a right to  
32 designate the beneficiary of a transfer on death transfer.

33 (6) "Ownership in beneficiary form" means holding property  
34 under a registration in beneficiary form or other written  
35 instrument that:

36 (A) names the owner of the property;

37 (B) directs ownership of the property to be transferred  
38 upon the death of the owner to the designated beneficiary;

- 1                   **and**
- 2                   **(C) designates the beneficiary.**
- 3           **(7) "Person" means an individual, a sole proprietorship, a**  
 4           **partnership, an association, a fiduciary, a trustee, a**  
 5           **corporation, a limited liability company, or any other business**  
 6           **entity.**
- 7           **(8) "Proof of death" means a death certificate or a record or**  
 8           **report that is prima facie proof or evidence of an individual's**  
 9           **death.**
- 10           **(9) "Property" means any present or future interest in real**  
 11           **property, intangible personal property (as defined in**  
 12           **IC 6-4.1-1-5), or tangible personal property (as defined in**  
 13           **IC 6-4.1-1-13). The term includes:**
- 14                   **(A) a right to direct or receive payment of a debt;**  
 15                   **(B) a right to direct or receive payment of money or other**  
 16                   **benefits due under a contract, account agreement, deposit**  
 17                   **agreement, employment contract, compensation plan,**  
 18                   **pension plan, individual retirement plan, employee benefit**  
 19                   **plan, or trust or by operation of law;**  
 20                   **(C) a right to receive performance remaining due under a**  
 21                   **contract;**  
 22                   **(D) a right to receive payment under a promissory note or**  
 23                   **a debt maintained in a written account record;**  
 24                   **(E) rights under a certificated or uncertificated security;**  
 25                   **(F) rights under an instrument evidencing ownership of**  
 26                   **property issued by a governmental agency; and**  
 27                   **(G) rights under a document of title (as defined in**  
 28                   **IC 26-1-1-201).**
- 29           **(10) "Registration in beneficiary form" means titling of an**  
 30           **account record, certificate, or other written instrument that:**
- 31                   **(A) provides evidence of ownership of property in the**  
 32                   **name of the owner;**  
 33                   **(B) directs ownership of the property to be transferred**  
 34                   **upon the death of the owner to the designated beneficiary;**  
 35                   **and**  
 36                   **(C) designates the beneficiary.**
- 37           **(11) "Security" means a share, participation, or other interest**  
 38           **in property, in a business, or in an obligation of an enterprise**

1 or other issuer. The term includes a certificated security, an  
2 uncertificated security, and a security account.

3 (12) "Transfer on death deed" means a deed that conveys an  
4 interest in real property to a grantee by beneficiary  
5 designation.

6 (13) "Transfer on death transfer" refers to a transfer of  
7 property that takes effect upon the death of the owner under  
8 a beneficiary designation made under this chapter.

9 (14) "Transferring entity" means a person who:

10 (A) owes a debt or is obligated to pay money or benefits;

11 (B) renders contract performance;

12 (C) delivers or conveys property; or

13 (D) changes the record of ownership of property on the  
14 books, records, and accounts of an enterprise or on a  
15 certificate or document of title that evidences property  
16 rights.

17 The term includes a governmental agency, business entity, or  
18 transfer agent that issues certificates of ownership or title to  
19 property and a person acting as a custodial agent for an  
20 owner's property. However, the term does not include a  
21 governmental office charged with endorsing, entering, or  
22 recording the transfer of real property in the public records.

23 Sec. 4. (a) The following transfers of ownership are not  
24 considered transfer on death transfers for purposes of this chapter:

25 (1) Transfers by rights of survivorship in property held as  
26 joint tenants or tenants by the entirety.

27 (2) A transfer to a remainderman on the termination of a life  
28 tenancy.

29 (3) An inter vivos or a testamentary transfer under a trust  
30 established by an individual.

31 (4) A transfer made under the exercise or nonexercise of a  
32 power of appointment.

33 (5) A transfer made on the death of a person who did not have  
34 the right to designate the person's estate as the beneficiary of  
35 the transfer.

36 (b) A beneficiary designation made under this chapter must do  
37 the following:

38 (1) Designate the beneficiary of a transfer on death transfer.

1           **(2) Make the transfer effective upon the death of the owner of**  
 2           **the property being transferred.**

3           **(3) Comply with this chapter, the conditions of any governing**  
 4           **instrument, and any other applicable law.**

5           **(c) For purposes of construing this chapter or a beneficiary**  
 6           **designation made under this chapter, the death of the last surviving**  
 7           **owner of property held by joint owners is considered the death of**  
 8           **the owner.**

9           **(d) Except as otherwise provided in this chapter, a transfer on**  
 10          **death direction is accomplished in a form substantially similar to**  
 11          **the following:**

12           **(1) Insert Name of the Owner or Owners.**

13           **(2) Insert "Transfer on death to" or "TOD" or "Pay on death**  
 14           **to" or "POD".**

15           **(3) Insert the Name of the Beneficiary or Beneficiaries.**

16          **(e) An owner may revoke or change a beneficiary designation at**  
 17          **any time before the owner's death.**

18          **Sec. 5. A transfer on death transfer:**

19           **(1) is effective with or without consideration;**

20           **(2) is not considered testamentary;**

21           **(3) is not subject to the requirements for a will or for**  
 22           **probating a will under IC 29-1; and**

23           **(4) may be subject to an agreement between the owner and a**  
 24           **transferring entity to carry out the owner's intent to transfer**  
 25           **the property under this chapter.**

26          **Sec. 6. For the purpose of discharging its duties under this**  
 27          **chapter, the authority of a transferring entity acting as agent for**  
 28          **an owner of property subject to a transfer on death transfer does**  
 29          **not cease at the death of the owner. The transferring entity shall**  
 30          **transfer the property to the designated beneficiary in accordance**  
 31          **with the beneficiary designation and this chapter.**

32          **Sec. 7. (a) If any of the following are required, an agreement**  
 33          **between the owner and the transferring entity is necessary to carry**  
 34          **out a transfer on death transfer, which may be made in accordance**  
 35          **with the rules, terms, and conditions set forth in the agreement:**

36           **(1) The submission to the transferring entity of a beneficiary**  
 37           **designation under a governing instrument.**

38           **(2) Registration by a transferring entity of a transfer on death**



direction on any certificate or record evidencing ownership of property.

(3) Consent of a contract obligor for a transfer of performance due under the contract.

(4) Consent of a financial institution for a transfer of an obligation of the financial institution.

(5) Consent of a transferring entity for a transfer of an interest in the transferring entity.

(b) When subsection (a) applies, a transferring entity is not required to accept an owner's request to assist the owner in carrying out a transfer on death transfer.

(c) If a beneficiary designation, revocation, or change is subject to acceptance by a transferring entity, the transferring entity's acceptance of the beneficiary designation, revocation, or change relates back to and is effective as of the time the request was received by the transferring entity.

**Sec. 8. (a)** If a transferring entity accepts a beneficiary designation or beneficiary assignment or registers property in beneficiary form, the acceptance or registration constitutes the agreement of the owner and the transferring entity that, subject to this section, the owner's property will be transferred to and placed in the name and control of the beneficiary in accordance with the beneficiary designation or transfer on death direction, the agreement between the parties, and this chapter.

(b) An agreement described in subsection (a) is subject to the owner's power to revoke or change a beneficiary designation before the owner's death.

(c) A transferring entity's duties under an agreement described in subsection (a) are subject to the following:

(1) Receiving proof of the owner's death.

(2) Complying with the transferring entity's requirements for proof that the beneficiary is entitled to receive the property.

**Sec. 9. (a)** Except as provided in subsection (c), a beneficiary designation that satisfies the requirements of subsection (b):

(1) authorizes a transfer of property under this chapter;

(2) is effective on the death of the owner of the property; and

(3) transfers the right to receive the property to the designated beneficiary who survives the death of the owner.

1           (b) A beneficiary designation is effective under subsection (a) if  
2 the beneficiary designation is:

3           (1) executed; and

4           (2) delivered;

5 in proper form to the transferring entity before the death of the  
6 owner.

7           (c) A transferring entity shall make a transfer described in  
8 subsection (a)(3) unless there is clear and convincing evidence of  
9 the owner's different intention at the time the beneficiary  
10 designation was created.

11       Sec. 10. (a) A written assignment of a contract right that:

12           (1) assigns the right to receive any performance remaining  
13 due under the contract to an assignee designated by the  
14 owner; and

15           (2) expressly states that the assignment does not take effect  
16 until the death of the owner;

17 transfers the right to receive performance due under the contract  
18 to the designated assignee beneficiary if the assignment satisfies the  
19 requirements of subsection (b).

20           (b) A written assignment described in subsection (a) is effective  
21 upon the death of the owner if the assignment is:

22           (1) executed; and

23           (2) delivered;

24 in proper form to the contract obligor before the death of the  
25 owner.

26           (c) A beneficiary assignment described in this section is not  
27 required to be supported by consideration or delivered to the  
28 assignee beneficiary.

29           (d) This section does not preclude other methods of assignment  
30 that are permitted by law and have the effect of postponing the  
31 enjoyment of the contract right until after the death of the owner.

32       Sec. 11. (a) A transfer on death deed transfers the interest  
33 provided to the beneficiary if the transfer on death deed is:

34           (1) executed in proper form; and

35           (2) recorded with the recorder of deeds in the county in which  
36 the real property is situated before the death of the owner.

37           (b) A transfer on death deed is void if it is not recorded with the  
38 recorder of deeds in the county in which the real property is

1       situated before the death of the owner.

2       (c) A transfer on death deed is not required to be supported by  
3       consideration or delivered to the grantee beneficiary.

4       (d) A transfer on death deed may be used to transfer an interest  
5       in real property to either a revocable or an irrevocable trust.

6       (e) If the owner makes a transfer on death deed, the effect of the  
7       conveyance is determined as follows:

8           (1) If the owner's interest in the real property is as a tenant by  
9           the entirety, the conveyance is inoperable and void unless the  
10          other spouse joins in the conveyance.

11          (2) If the owner's interest in the real property is as a joint  
12          tenant with rights of survivorship, the conveyance severs the  
13          joint tenancy and the cotenancy becomes a tenancy in  
14          common.

15          (3) If the owner's interest in the real property is as a joint  
16          tenant with rights of survivorship and the property is subject  
17          to a beneficiary designation, a conveyance of any joint  
18          owner's interest has no effect on the original beneficiary  
19          designation for the nonsevering joint tenant.

20          (4) If the owner's interest is as a tenant in common, the  
21          owner's interest passes to the beneficiary as a transfer on  
22          death transfer.

23          (5) If the owner's interest is a life estate determined by the  
24          owner's life, the conveyance is inoperable and void.

25          (6) If the owner's interest is any other interest, the interest  
26          passes in accordance with this chapter and the terms and  
27          conditions of the conveyance establishing the interest. If a  
28          conflict exists between the conveyance establishing the  
29          interest and this chapter, the terms and conditions of the  
30          conveyance establishing the interest prevail.

31       (f) A beneficiary designation in a transfer on death deed may be  
32       worded in substance as "(insert owner's name) conveys and  
33       warrants (or quitclaims) to (insert owner's name), TOD to (insert  
34       beneficiary's name)". This example is not intended to be  
35       exhaustive.

36       (g) A transfer on death deed using the phrase "pay on death to"  
37       or the abbreviation "POD" may not be construed to require the  
38       liquidation of the real property being transferred.

(h) This section does not preclude other methods of conveying real property that are permitted by law and have the effect of postponing enjoyment of an interest in real property until after the death of the owner. This section applies only to transfer on death deeds and does not invalidate any deed that is otherwise effective by law to convey title to the interest and estates provided in the deed.

Sec. 12. (a) A deed of gift, bill of sale, or other writing intended to transfer an interest in tangible personal property is effective on the death of the owner and transfers ownership to the designated transferee beneficiary if the document:

- (1) expressly creates ownership in beneficiary form;
- (2) is in other respects sufficient to transfer the type of property involved; and
- (3) is executed by the owner and acknowledged before a notary public or other person authorized to administer oaths.

(b) A beneficiary transfer document described in this section is not required to be supported by consideration or delivered to the transferee beneficiary.

(c) This section does not preclude other methods of transferring ownership of tangible personal property that are permitted by law and have the effect of postponing enjoyment of the property until after the death of the owner.

Sec. 13. (a) A transferor of property, with or without consideration, may execute a written instrument directly transferring the property to a transferee to hold as owner in beneficiary form.

(b) A transferee under an instrument described in subsection (a) is considered the owner of the property for all purposes and has all the rights to the property provided by law to the owner of the property, including the right to revoke or change the beneficiary designation.

(c) A direct transfer of property to a transferee to hold as owner in beneficiary form is effective when the written instrument perfecting the transfer becomes effective to make the transferee the owner.

Sec. 14. (a) Property may be held or registered in beneficiary form by including in the name in which the property is held or

1 registered a direction to transfer the property on the death of the  
2 owner to a beneficiary designated by the owner.

3 (b) Property is registered in beneficiary form by showing on the  
4 account record, security certificate, or instrument evidencing  
5 ownership of the property:

6 (1) the name of the owner and, if applicable, the estate by  
7 which two (2) or more joint owners hold the property; and

8 (2) an instruction substantially similar in form to "transfer on  
9 death to (insert name of beneficiary)".

10 An instruction to "pay on death to (insert name of the  
11 beneficiary)" and the use of the abbreviations "TOD" and "POD"  
12 are also permitted by this section.

13 (c) Only a transferring entity or a person authorized by the  
14 transferring entity may place a transfer on death direction  
15 described by this section on an account record, a security  
16 certificate, or an instrument evidencing ownership of property.

17 (d) A transfer on death direction described by this section is  
18 effective on the death of the owner and transfers the owner's  
19 interest in the property to the designated beneficiary if:

20 (1) the property is registered in beneficiary form before the  
21 death of the owner; or

22 (2) the transfer on death direction is delivered in proper form  
23 to the transferring entity before the owner's death.

24 (e) An account record, security certificate, or instrument  
25 evidencing ownership of property that contains a transfer on death  
26 direction written as part of the name in which the property is held  
27 or registered is conclusive evidence, in the absence of fraud, duress,  
28 undue influence, lack of capacity, or mistake, that the direction  
29 was:

30 (1) regularly made by the owner;

31 (2) accepted by the transferring entity; and

32 (3) not revoked or changed before the owner's death.

33 **Sec. 15. (a)** Before the death of the owner, a beneficiary has no  
34 rights in the property because of the beneficiary designation. The  
35 signature or agreement of the beneficiary is not required for any  
36 transaction relating to property transferred under this chapter. If  
37 a lienholder takes action to enforce a lien, by foreclosure or  
38 otherwise through a court proceeding, it is not necessary to join the

1 beneficiary as a party defendant in the action unless the  
2 beneficiary has another interest in the real property that has  
3 vested.

4 (b) On the death of one (1) of two (2) or more joint owners,  
5 property with respect to which a beneficiary designation has been  
6 made belongs to the surviving joint owner or owners. If at least two  
7 (2) joint owners survive, the right of survivorship continues as  
8 between the surviving owners.

9 (c) On the death of a tenant by the entirety, property with  
10 respect to which a beneficiary designation has been made belongs  
11 to the surviving tenant.

12 (d) On the death of the owner, property with respect to which  
13 a beneficiary designation has been made passes by operation of law  
14 to the beneficiary.

15 (e) If two (2) or more beneficiaries survive, there is no right of  
16 survivorship among the beneficiaries when the death of a  
17 beneficiary occurs after the death of the owner unless the  
18 beneficiary designation expressly provides for survivorship among  
19 the beneficiaries. Except as expressly provided otherwise, the  
20 surviving beneficiaries hold their separate interest in the property  
21 as tenants in common. The share of any beneficiary who dies after  
22 the owner dies belongs to the deceased beneficiary's estate.

23 (f) If no beneficiary survives the owner, the property belongs to  
24 the estate of the owner unless the beneficiary designation directs  
25 the transfer to a substitute beneficiary in the manner required by  
26 section 22 of this chapter.

27 Sec. 16. (a) A beneficiary designation may be revoked or  
28 changed during the lifetime of the owner.

29 (b) A revocation or change of a beneficiary designation  
30 involving property owned as tenants by the entirety must be made  
31 with the agreement of both tenants for so long as both tenants are  
32 alive. After an individual dies owning as a tenant by the entirety  
33 property that is subject to a beneficiary designation, the  
34 individual's surviving spouse may revoke or change the beneficiary  
35 designation.

36 (c) A revocation or change of a beneficiary designation involving  
37 property owned in a form of ownership (other than as tenants by  
38 the entirety) that restricts conveyance of the interest unless another

1 person joins in the conveyance must be made with the agreement  
2 of each living owner required to join in a conveyance.

3 (d) A revocation or change of a beneficiary designation  
4 involving property owned by joint owners with a right of  
5 survivorship must be made with the agreement of each living  
6 owner.

7 (e) A subsequent beneficiary designation revokes a prior  
8 beneficiary designation unless the subsequent beneficiary  
9 designation expressly provides otherwise.

10 (f) A revocation or change in a beneficiary designation must  
11 comply with the terms of any governing instrument, this chapter,  
12 and any other applicable law.

13 (g) A beneficiary designation may not be revoked or changed by  
14 a will unless the beneficiary designation expressly grants the owner  
15 the right to revoke or change the beneficiary designation by a will.

16 (h) A transfer during the owner's lifetime of the owner's interest  
17 in the property, with or without consideration, terminates the  
18 beneficiary designation with respect to the property transferred.

19 (i) The effective date of a revocation or change in a beneficiary  
20 designation is determined in the same manner as the effective date  
21 of a beneficiary designation.

22 (j) An owner may revoke a beneficiary designation made in a  
23 transfer on death deed by executing and recording with the  
24 recorder of deeds in the county in which the real property is  
25 situated either:

26 (1) a subsequent deed of conveyance revoking, omitting, or  
27 changing the beneficiary designation; or

28 (2) an affidavit acknowledged or proved under IC 32-21-2-3  
29 that revokes or changes the beneficiary designation.

30 (k) A physical act, such as a written modification on or the  
31 destruction of a transfer on death deed after the transfer on death  
32 deed has been recorded, has no effect on the beneficiary  
33 designation.

34 (l) A transfer on death deed may not be revoked or modified by  
35 will or trust.

36 Sec. 17. (a) An attorney in fact, guardian, conservator, or other  
37 agent acting on the behalf of the owner of property may make,  
38 revoke, or change a beneficiary designation if:

1           (1) the action complies with the terms of this chapter and any  
2           other applicable law; and

3           (2) the action is not expressly forbidden by the document  
4           establishing the agent's right to act on behalf of the owner.

5           (b) An attorney in fact, guardian, conservator, or other agent  
6           may withdraw, sell, pledge, or otherwise transfer property that is  
7           subject to a beneficiary designation notwithstanding the fact that  
8           the effect of the transaction may be to extinguish a beneficiary's  
9           right to receive a transfer of the property at the death of the owner.

10          (c) The rights of a beneficiary to any part of property that is  
11          subject to a beneficiary designation after the death of the owner  
12          are determined under IC 29-3-8-6.5 if:

13           (1) a guardian or conservator takes possession of the  
14           property;

15           (2) the guardian sells, transfers, encumbers, or consumes the  
16           property during the protected person's lifetime; and

17           (3) the owner subsequently dies.

18          Sec. 18. If property subject to a beneficiary designation is lost,  
19          destroyed, damaged, or involuntarily converted during the owner's  
20          lifetime, the beneficiary succeeds to any right with respect to the  
21          loss, destruction, damage, or involuntary conversion that the  
22          owner would have had if the owner had survived. However, the  
23          beneficiary has no interest in any payment or substitute property  
24          received by the owner during the owner's lifetime.

25          Sec. 19. (a) A beneficiary of a transfer on death transfer takes  
26          the owner's interest in the property at the death of the owner  
27          subject to all conveyances, assignments, contracts, set offs, licenses,  
28          easements, liens, and security interests made by the owner or to  
29          which the owner was subject during the owner's lifetime.

30          (b) A beneficiary of a transfer on death transfer of an account  
31          with a bank, savings and loan association, credit union, broker, or  
32          mutual fund takes the owner's interest in the property at the death  
33          of the owner subject to all requests for payment of money issued by  
34          the owner before the owner's death, whether paid by the  
35          transferring entity before or after the owner's death, or unpaid.  
36          The beneficiary is liable to the payee of an unsatisfied request for  
37          payment to the extent that the request represents an obligation that  
38          was enforceable against the owner during the owner's lifetime.



(c) Each beneficiary's liability with respect to an unsatisfied request for payment is limited to the same proportionate share of the request for payment as the beneficiary's proportionate share of the account under the beneficiary designation. Each beneficiary has the right of contribution from the other beneficiaries with respect to a request for payment that is satisfied after the owner's death, to the extent that the request for payment would have been enforceable by the payee during the owner's lifetime.

**Sec. 20.** An individual who is a beneficiary of a transfer on death transfer is not entitled to a transfer unless the individual:

- (1) survives the owner; and
- (2) survives the owner by the time, if any, required by the terms of the beneficiary designation.

**Sec. 21. (a)** A trustee of a trust may be a designated beneficiary regardless of whether the trust is amendable, revocable, irrevocable, funded, unfunded, or amended after the designation is made.

(b) Unless a beneficiary designation provides otherwise, a trust that is revoked or terminated before the death of the owner is considered nonexistent at the owner's death.

(c) Unless a beneficiary designation provides otherwise, a legal entity or trust that does not:

- (1) exist; or
  - (2) come into existence effective as of the owner's death;
- is considered nonexistent at the owner's death.

**Sec. 22. (a)** Notwithstanding sections 9 and 20 of this chapter, a designated beneficiary's rights under this chapter are not extinguished when the designated beneficiary does not survive the owner if:

- (1) subsection (b) applies in the case of a designated beneficiary who is a lineal descendant of the owner; or
- (2) subsection (d) applies in the case of a designated beneficiary who is not a lineal descendant of the owner.

(b) If a designated beneficiary who is a lineal descendant of the owner:

- (1) is deceased at the time the beneficiary designation is made;
- (2) does not survive the owner; or
- (3) is treated as not surviving the owner;

1 the beneficiary's right to a transfer on death transfer belongs to the  
 2 beneficiary's lineal descendants per stirpes who survive the owner  
 3 unless the owner provides otherwise under subsection (c).

4 (c) An owner may execute a beneficiary designation to which  
 5 subsection (b) does not apply by:

6 (1) making the notation "No LDPS" after a beneficiary's  
 7 name; or

8 (2) including other words negating an intention to direct the  
 9 transfer to the lineal descendant substitutes of the  
 10 nonsurviving beneficiary.

11 (d) An owner may execute a beneficiary designation that  
 12 provides that the right to a transfer on death transfer belonging to  
 13 a beneficiary who is not a lineal descendant of the owner and does  
 14 not survive the owner belongs to the beneficiary's lineal  
 15 descendants per stirpes who survive the owner. An owner's intent  
 16 to direct the transfer to the nonsurviving beneficiary's lineal  
 17 descendants must be shown by either of the following on the  
 18 beneficiary designation after the name of the beneficiary:

19 (1) The words "and lineal descendants per stirpes".

20 (2) The notation "LDPS".

21 (e) When two (2) or more individuals receive a transfer on death  
 22 transfer as substitute beneficiaries under subsection (b) or (d), the  
 23 individuals are entitled to equal shares of the property if they are  
 24 of the same degree of kinship to the nonsurviving beneficiary. If the  
 25 substitute beneficiaries are of unequal degrees of kinship, an  
 26 individual of a more remote degree is entitled by representation to  
 27 the share that would otherwise belong to the individual's parent.

28 (f) If:

29 (1) a designated beneficiary of a transfer on death transfer  
 30 does not survive the owner;

31 (2) either subsection (b) or (d) applies; and

32 (3) no lineal descendant of the designated beneficiary survives  
 33 the owner;

34 the right to receive the property transferred belongs to the other  
 35 surviving beneficiaries. If no other beneficiary survives the owner,  
 36 the property belongs to the owner's estate.

37 Sec. 23. (a) If, after an owner makes a beneficiary designation,  
 38 the owner's marriage is dissolved or annulled, any provision of the

beneficiary designation in favor of the owner's former spouse is revoked on the date the marriage is dissolved or annulled. Revocation under this subsection is effective regardless of whether the beneficiary designation refers to the owner's marital status. The beneficiary designation is given effect as if the former spouse had not survived the owner.

(b) Subsection (a) does not apply to a provision of a beneficiary designation that:

- (1) has been made irrevocable, or revocable only with the spouse's consent;
- (2) is made after the marriage is dissolved or annulled; or
- (3) expressly states that the dissolution or annulment of the marriage does not affect the designation of a spouse or a relative of the spouse as a beneficiary.

(c) A provision of a beneficiary designation that is revoked solely by subsection (a) is revived by the owner's remarriage to the former spouse or by a nullification of the dissolution or annulment of the marriage.

(d) This section does not apply to any employee benefit plan governed by the Employee Retirement Income Security Act of 1974.

**Sec. 24. (a)** A beneficiary designation or a revocation of a beneficiary designation that is procured by fraud, duress, undue influence, or mistake or because the owner lacked capacity is void.

(b) A beneficiary designation made under this chapter is subject to IC 29-1-2-12.1.

**Sec. 25. (a)** No law intended to protect a spouse or child from disinheritance by the will of a testator applies to a transfer on death transfer.

(b) A beneficiary designation designating the children of the owner or children of any other person as a class and not by name includes all children of the person regardless of whether the child is born or adopted before or after the beneficiary designation is made.

(c) Except as provided in subsection (d), a child of the owner born or adopted after the owner makes a beneficiary designation that names another child of the owner as the beneficiary is entitled to receive a fractional share of the property that would otherwise

1 be transferred to the named beneficiary. The share of the property  
 2 to which each child of the owner is entitled to receive is expressed  
 3 as a fraction in which the numerator is one (1) and the  
 4 denominator is the total number of the owner's children.

5 (d) A beneficiary designation or a governing instrument may  
 6 provide that subsection (c) does not apply to an owner's beneficiary  
 7 designation. In addition, a transferring entity is not obligated to  
 8 apply subsection (c) to property registered in beneficiary form.

9 (e) If a beneficiary designation does not name any child of the  
 10 owner as the designated beneficiary with respect to a particular  
 11 property interest, a child of the owner born or adopted after the  
 12 owner makes the beneficiary designation is not entitled to any  
 13 share of the property interest subject to the designation.

14 Sec. 26. (a) If an agreement between the owner and a  
 15 transferring entity is required to carry out a transfer on death  
 16 transfer as described in section 7 of this chapter, a transferring  
 17 entity may not adopt rules for the making, execution, acceptance,  
 18 and revocation of a beneficiary designation that are inconsistent  
 19 with this chapter. A transferring entity may adopt the rules  
 20 imposed by subsection (b) in whole or in part by incorporation by  
 21 reference.

22 (b) Except as otherwise provided in a beneficiary designation,  
 23 a governing instrument, or any other applicable law, the following  
 24 rules apply to a beneficiary designation:

25 (1) A beneficiary designation or a request for registration of  
 26 property in beneficiary form must be made in writing, signed  
 27 by the owner, dated, and, in the case of a transfer on death  
 28 deed, compliant with all requirements for the recording of  
 29 deeds.

30 (2) A security that is not registered in the name of the owner  
 31 may be registered in beneficiary form on instructions given by  
 32 a broker or person delivering the security.

33 (3) A beneficiary designation may designate one (1) or more  
 34 primary beneficiaries and one (1) or more contingent  
 35 beneficiaries.

36 (4) On property registered in beneficiary form, a primary  
 37 beneficiary is the person shown immediately following the  
 38 transfer on death direction. Words indicating that the person

1 is a primary beneficiary are not required. The name of a  
2 contingent beneficiary in the registration must have the words  
3 "contingent beneficiary" or words of similar meaning to  
4 indicate the contingent nature of the interest being  
5 transferred.

6 (5) Multiple surviving beneficiaries share equally in the  
7 property being transferred unless a different percentage or  
8 fractional share is stated for each beneficiary. If a percentage  
9 or fractional share is designated for multiple beneficiaries, the  
10 surviving beneficiaries share in the proportion that their  
11 designated shares bear to each other.

12 (6) A transfer of unequal shares to multiple beneficiaries for  
13 property registered in beneficiary form may be expressed in  
14 numerical form following the name of the beneficiary in the  
15 registration.

16 (7) A transfer on death transfer of property also transfers any  
17 interest, rent, royalties, earnings, dividends, or credits earned  
18 or declared on the property but not paid or credited before  
19 the owner's death.

20 (8) If a distribution by a transferring entity under a transfer  
21 on death transfer results in fractional shares in a security or  
22 other property that is not divisible, the transferring entity  
23 may distribute the fractional shares in the name of all  
24 beneficiaries as tenants in common or as the beneficiaries may  
25 direct, or the transferring entity may sell the property that is  
26 not divisible and distribute the proceeds to the beneficiaries  
27 in the proportions to which they are entitled.

28 (9) On the death of the owner, the property, minus all  
29 amounts and charges owed by the owner to the transferring  
30 entity, belongs to the surviving beneficiaries and, in the case  
31 of substitute beneficiaries permitted under section 22 of this  
32 chapter, the lineal descendants of designated beneficiaries  
33 who did not survive the owner are entitled to the property as  
34 follows:

35 (A) If there are multiple primary beneficiaries and a  
36 primary beneficiary does not survive the owner and does  
37 not have a substitute under section 22 of this chapter, the  
38 share of the nonsurviving beneficiary is allocated among

- 1           the surviving beneficiaries in the proportion that their  
2           shares bear to each other.
- 3           **(B) If there are no surviving primary beneficiaries and**  
4           **there are no substitutes for the nonsurviving primary**  
5           **beneficiaries under section 22 of this chapter, the property**  
6           **belongs to the surviving contingent beneficiaries in equal**  
7           **shares or according to the percentages or fractional shares**  
8           **stated in the registration.**
- 9           **(C) If there are multiple contingent beneficiaries and a**  
10          **contingent beneficiary does not survive the owner and does**  
11          **not have a substitute under section 22 of this chapter, the**  
12          **share of the nonsurviving contingent beneficiary is**  
13          **allocated among the surviving contingent beneficiaries in**  
14          **the proportion that their shares bear to each other.**
- 15       **(10) If a trustee designated as a beneficiary:**  
16               **(A) does not survive the owner;**  
17               **(B) resigns; or**  
18               **(C) is unable or unwilling to execute the trust as trustee**  
19               **and no successor trustee is appointed in the twelve (12)**  
20               **months following the owner's death;**
- 21       the transferring entity may make the distribution as if the  
22       trust did not survive the owner.
- 23       **(11) If a trustee is designated as a beneficiary and no trust**  
24       **instrument or probated will creating an express trust is**  
25       **presented to the transferring entity, the transferring entity**  
26       **may make the distribution as if the trust did not survive the**  
27       **owner.**
- 28       **(12) If the transferring entity is not presented evidence during**  
29       **the twelve (12) months after the owner's death that there are**  
30       **lineal descendants of a nonsurviving beneficiary for whom**  
31       **LDPS distribution applies who survived the owner, the**  
32       **transferring entity may make the transfer as if the**  
33       **nonsurviving beneficiary's descendants also failed to survive**  
34       **the owner.**
- 35       **(13) If a beneficiary cannot be located at the time the transfer**  
36       **is made to located beneficiaries, the transferring entity shall**  
37       **hold the missing beneficiary's share. If the missing**  
38       **beneficiary's share is not claimed by the beneficiary or by the**

1 beneficiary's personal representative or successor during the  
2 twelve (12) months after the owner's death, the transferring  
3 entity shall transfer the share as if the beneficiary did not  
4 survive the owner.

5 (14) A transferring entity has no obligation to attempt to  
6 locate a missing beneficiary, to pay interest on the share held  
7 for a missing beneficiary, or to invest the share in any  
8 different property.

9 (15) Cash, interest, rent, royalties, earnings, or dividends  
10 payable to a missing beneficiary may be held by the  
11 transferring entity at interest or reinvested by the  
12 transferring entity in the account or in a dividend  
13 reinvestment account associated with a security held for the  
14 missing beneficiary.

15 (16) If a transferring entity is required to make a transfer on  
16 death transfer to a minor or an incapacitated adult, the  
17 transfer may be made under the Indiana Uniform Transfers  
18 to Minors Act, the Indiana Uniform Custodial Trust Act, or  
19 a similar law of another state.

20 (17) A written request for the execution of a transfer on death  
21 transfer may be made by any beneficiary, a beneficiary's legal  
22 representative or attorney in fact, or the owner's personal  
23 representative.

24 (18) A transfer under a transfer on death deed occurs  
25 automatically upon the owner's death subject to the  
26 requirements of subdivision (20) and does not require a  
27 request for the execution of the transfer.

28 (19) A written request for the execution of a transfer on death  
29 transfer must be accompanied by the following:

30 (A) A certificate or instrument evidencing ownership of the  
31 contract, account, security, or property.

32 (B) Proof of the deaths of the owner and any nonsurviving  
33 beneficiary.

34 (C) An inheritance tax waiver from states that require it.

35 (D) In the case of a request by a legal representative, a  
36 copy of the instrument creating the legal authority or a  
37 certified copy of the court order appointing the legal  
38 representative.

1           (E) Any other proof of the person's entitlement that the  
2           transferring entity may require.

3           **(20) On the death of an owner whose transfer on death deed**  
4           **has been recorded, the beneficiary shall file an affidavit in the**  
5           **office of the recorder of the county in which the real property**  
6           **is located. The affidavit must contain the following:**

7               (A) The legal description of the property.

8               (B) A certified copy of the death certificate certifying the  
9               owner's death.

10              (C) The name and address of each designated beneficiary  
11              who survives the owner or is in existence on the date of the  
12              owner's death.

13              (D) The name of each designated beneficiary who has not  
14              survived the owner's death or is not in existence on the  
15              date of the owner's death.

16              (E) A cross-reference to the recorded transfer on death  
17              deed.

18           (c) A beneficiary designation is presumed to be valid. A party  
19           may rely on the presumption of validity unless the party has actual  
20           knowledge that the beneficiary designation was not validly  
21           executed. A person who acts in good faith reliance on a transfer on  
22           death deed is immune from liability to the same extent as if the  
23           person had dealt directly with the named owner and the named  
24           owner had been competent and not incapacitated.

25           Sec. 27. (a) An owner who makes arrangements for a transfer  
26           on death transfer under this chapter gives to the transferring entity  
27           the protections provided in this section for executing the owner's  
28           beneficiary designation.

29           (b) A transferring entity may execute a transfer on death  
30           transfer with or without a written request for execution.

31           (c) A transferring entity may rely and act on:

32               (1) a certified or authenticated copy of a death certificate  
33               issued by an official or an agency of the place where the death  
34               occurred as showing the fact, place, date, and time of death  
35               and the identity of the decedent; and

36               (2) a certified or authenticated copy of a report or record of  
37               any governmental agency that a person is missing, detained,  
38               dead, or alive, and the dates, circumstances, and places



1 disclosed by the record or report.

2 (d) A transferring entity has no duty to verify the information  
3 contained within a written request for the execution of a  
4 beneficiary designation. The transferring entity may rely and act  
5 on a request made by a beneficiary or a beneficiary's attorney in  
6 fact, guardian, conservator, or other agent.

7 (e) A transferring entity has no duty to:

8 (1) except as provided in subsection (g), give notice to any  
9 person of the date, manner, and persons to whom a transfer  
10 will be made under beneficiary designation;

11 (2) attempt to locate any beneficiary or lineal descendant  
12 substitute;

13 (3) determine whether a nonsurviving beneficiary or  
14 descendant had a lineal descendant who survived the owner;

15 (4) locate a trustee or custodian;

16 (5) obtain the appointment of a successor trustee or custodian;

17 (6) discover the existence of a trust instrument or will that  
18 creates an express trust; or

19 (7) determine any fact or law that would:

20 (A) cause the beneficiary designation to be revoked in  
21 whole or in part as to any person because of a change in  
22 marital status or other reason; or

23 (B) cause a variation in the distribution provided in the  
24 beneficiary designation.

25 (f) A transferring entity has no duty to withhold making a  
26 transfer based on knowledge of any fact or claim adverse to the  
27 transfer to be made unless before making the transfer the  
28 transferring entity receives a written notice that:

29 (1) in manner, place, and time affords a reasonable  
30 opportunity to act on the notice before making the transfer;  
31 and

32 (2) does the following:

33 (A) Asserts a claim of beneficial interest in the transfer  
34 adverse to the transfer to be made.

35 (B) Gives the name of the claimant and an address for  
36 communications directed to the claimant.

37 (C) Identifies the deceased owner.

38 (D) States the nature of the claim as it affects the transfer.

(g) If a transferring entity receives a timely notice meeting the requirements of subsection (f), the transferring entity may discharge any duty to the claimant by sending a notice by certified mail to the claimant at the address provided by the claimant's notice of claim. The notice must advise the claimant that a transfer to the claimant's asserted claim will be made at least forty-five (45) days after the date of the mailing unless the transfer is restrained by a court order. If the transferring entity mails the notice described by this subsection to the claimant, the transferring entity shall withhold making the transfer for at least forty-five (45) days after the date of the mailing. Unless the transfer is restrained by court order, the transferring entity may make the transfer at least forty-five (45) days after the date of the mailing.

(h) Neither notice that does not comply with the requirements of subsection (f) nor any other information shown to have been available to a transferring entity, its transfer agent, or its employees affects the transferring entity's right to the protections provided by this chapter.

(i) A transferring entity is not responsible for the application or use of property transferred to a fiduciary entitled to receive the property.

(j) Notwithstanding the protections provided a transferring entity by this chapter, a transferring entity may require parties engaged in a dispute over the propriety of a transfer to:

- (1) adjudicate their respective rights; or
- (2) furnish an indemnity bond protecting the transferring entity.

(k) A transfer by a transferring entity made in accordance with this chapter and under the beneficiary designation in good faith and reliance on information the transferring entity reasonably believes to be accurate discharges the transferring entity from all claims for the amounts paid and the property transferred.

(l) All protections provided by this chapter to a transferring entity are in addition to the protections provided by any other applicable Indiana law.

Sec. 28. (a) The protections provided to a transferring entity or to a purchaser or lender for value by this chapter do not affect the rights of beneficiaries or others involved in disputes that:

1           (1) are with parties other than a transferring entity or  
2           purchaser or lender for value; and

3           (2) concern the ownership of property transferred under this  
4           chapter.

5           (b) Unless the payment or transfer can no longer be challenged  
6           because of adjudication, estoppel, or limitations, a transferee of  
7           money or property under a transfer on death transfer that was  
8           improperly distributed or paid is liable for:

9           (1) the return of the money or property, including income  
10          earned on the money or property, to the transferring entity;  
11          or

12          (2) the delivery of the money or property, including income  
13          earned on the money or property, to the rightful transferee.

14          (c) If a transferee of money or property under a transfer on  
15          death transfer that was improperly distributed or paid does not  
16          have the property, the transferee is liable for an amount equal to  
17          the sum of:

18          (1) the value of the property as of the date of the disposition;  
19          and

20          (2) the income and gain that the transferee received from the  
21          property and its proceeds.

22          (d) If a transferee of money or property under a transfer on  
23          death transfer that was improperly distributed or paid encumbers  
24          the property, the transferee shall satisfy the debt incurred in an  
25          amount sufficient to release any security interest, lien, or other  
26          encumbrance on the property.

27          (e) A purchaser for value of property or a lender who acquires  
28          a security interest in the property from a beneficiary of a transfer  
29          on death transfer:

30          (1) in good faith; or

31          (2) without actual knowledge that:

32                  (A) the transfer was improper; or

33                  (B) information in an affidavit provided under section  
34                  26(b)(20) of this chapter was not true;

35          takes the property free of any claims of or liability to the owner's  
36          estate, creditors of the owner's estate, persons claiming rights as  
37          beneficiaries of the transfer on death transfer, or heirs of the  
38          owner's estate. A purchaser or lender for value has no duty to

1 verify sworn information relating to the transfer on death transfer.

2 (f) The protection provided by subsection (e) applies to  
3 information that relates to the beneficiary's ownership interest in  
4 the property and the beneficiary's right to sell, encumber, and  
5 transfer good title to a purchaser or lender but does not relieve a  
6 purchaser or lender from the notice provided by instruments of  
7 record with respect to the property.

8 (g) A transfer on death transfer that is improper under section  
9 22, 23, 24, or 25 of this chapter imposes no liability on the  
10 transferring entity if the transfer is made in good faith. The  
11 remedy of a rightful transferee must be obtained in an action  
12 against the improper transferee.

13 Sec. 29. (a) This chapter does not limit the rights of an owner's  
14 creditors against beneficiaries and other transferees that may be  
15 available under any other applicable Indiana law.

16 (b) The liability of a beneficiary for creditor claims and  
17 statutory allowances is determined under IC 32-17-13.

18 Sec. 30. Except as otherwise provided by law, a transfer on  
19 death transfer and the obligation of a transferring entity to execute  
20 the transfer on death transfer that are subject to this chapter  
21 under section 2(b) of this chapter remain subject to this chapter  
22 notwithstanding a change in the:

- 23 (1) beneficiary designation;
- 24 (2) residency of the owner;
- 25 (3) residency or place of business of the transferring entity; or
- 26 (4) location of the property.

27 Sec. 31. (a) The probate court shall hear and determine  
28 questions and issue appropriate orders concerning the  
29 determination of the beneficiary who is entitled to receive a  
30 transfer on death transfer and the proper share of each  
31 beneficiary.

32 (b) The probate court shall hear and determine questions and  
33 issue appropriate orders concerning any action to:

- 34 (1) obtain the distribution of any money or property from a  
35 transferring entity; or
- 36 (2) with respect to money or property that was improperly  
37 distributed to any person, obtain the return of:

- 38 (A) any money or property and income earned on the

1           **money or property; or**  
 2           **(B) an amount equal to the sum of the value of the money**  
 3           **or property plus income and gain realized from the money**  
 4           **or property.**

5           **Sec. 32. (a) Except for transfer on death deeds, a beneficiary**  
 6           **designation that purports to have been made and is valid under:**

7               **(1) the Uniform Probate Code as enacted by another state;**  
 8               **(2) the Uniform TOD Security Registration Law as enacted by**  
 9               **another state; or**  
 10              **(3) a similar law of another state;**

11           **is governed by the law of that state.**

12           **(b) A transfer on death transfer subject to a law described in**  
 13           **subsection (a) may be executed and enforced in Indiana.**

14           **(c) Except for transfer on death deeds, the meaning and legal**  
 15           **effect of a transfer on death transfer is determined by the law of**  
 16           **the state selected in a governing instrument or beneficiary**  
 17           **designation.**

18           SECTION 30. IC 32-21-2-3, AS AMENDED BY P.L.194-2007,  
 19           SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20           JULY 1, 2009]: Sec. 3. (a) For a conveyance, a mortgage, or an  
 21           instrument of writing to be recorded, it must be:

22               (1) acknowledged by the grantor; or  
 23               (2) proved before a:  
 24                   (A) judge;  
 25                   (B) clerk of a court of record;  
 26                   (C) county auditor;  
 27                   (D) county recorder;  
 28                   (E) notary public;  
 29                   (F) mayor of a city in Indiana or any other state;  
 30                   (G) commissioner appointed in a state other than Indiana by  
 31                   the governor of Indiana;  
 32                   (H) minister, charge d'affaires, or consul of the United States  
 33                   in any foreign country;  
 34                   (I) clerk of the city county council for a consolidated city, city  
 35                   clerk for a second class city, or clerk-treasurer for a third class  
 36                   city;  
 37                   (J) clerk-treasurer for a town; or  
 38                   (K) person authorized under IC 2-3-4-1.

(b) In addition to the requirements under subsection (a), a conveyance may not be recorded after June 30, 2007, unless it meets the requirements of this subsection. ~~If~~ **The conveyance must include the mailing address on the conveyance to which statements should be mailed under IC 6-1.1-22-8.1. If the mailing address for statements under IC 6-1.1-22-8.1** is not a street address or a rural route address of the grantee, the conveyance must also include a street address or rural route address of the grantee after the mailing address **for statements mailed under IC 6-1.1-22-8.1. A conveyance complies with this subsection if it contains the address or addresses required by this subsection at the end of the conveyance and immediately preceding or following the statements required by IC 36-2-11-15.**

SECTION 31. IC 34-9-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) This section applies when a person:

- (1) receives personal injuries caused by the wrongful act or omission of another; and
- (2) subsequently dies from causes other than those personal injuries.

(b) The personal representative of the decedent who was injured may maintain an action against the wrongdoer to recover all damages resulting before the date of death from those injuries that the decedent would have been entitled to recover had the decedent lived. The damages:

- (1) inure to the exclusive benefit of the decedent's estate; **and**
- (2) **are subject to IC 6-4.1."**

Page 8, between lines 31 and 32, begin a new paragraph and insert:  
"SECTION 33. IC 34-30-2-125.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 125.4. IC 29-2-19-11 (Concerning a person who relies on a funeral planning declaration).**

SECTION 34. IC 34-30-2-134.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 134.8. IC 32-17-14-26(c) (Concerning a person acting in good faith reliance on a transfer on death deed).**

SECTION 35. IC 35-41-4-2, AS AMENDED BY P.L.173-2006, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2009]: Sec. 2. (a) Except as otherwise provided in this section, a prosecution for an offense is barred unless it is commenced:

- (1) within five (5) years after the commission of the offense, in the case of a Class B, Class C, or Class D felony; or
- (2) within two (2) years after the commission of the offense, in the case of a misdemeanor.

(b) A prosecution for a Class B or Class C felony that would otherwise be barred under this section may be commenced within one (1) year after the earlier of the date on which the state:

- (1) first discovers evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis; or
- (2) could have discovered evidence sufficient to charge the offender with the offense through DNA (deoxyribonucleic acid) analysis by the exercise of due diligence.

(c) A prosecution for a Class A felony may be commenced at any time.

(d) A prosecution for murder may be commenced:

- (1) at any time; and
- (2) regardless of the amount of time that passes between:
  - (A) the date a person allegedly commits the elements of murder; and
  - (B) the date the alleged victim of the murder dies.

(e) A prosecution for the following offenses is barred unless commenced before the date that the alleged victim of the offense reaches thirty-one (31) years of age:

- (1) IC 35-42-4-3(a) (Child molesting).
- (2) IC 35-42-4-5 (Vicarious sexual gratification).
- (3) IC 35-42-4-6 (Child solicitation).
- (4) IC 35-42-4-7 (Child seduction).
- (5) IC 35-46-1-3 (Incest).

(f) A prosecution for forgery of an instrument for payment of money, or for the uttering of a forged instrument, under IC 35-43-5-2, is barred unless it is commenced within five (5) years after the maturity of the instrument.

(g) If a complaint, indictment, or information is dismissed because of an error, defect, insufficiency, or irregularity, a new prosecution may be commenced within ninety (90) days after the dismissal even if the period of limitation has expired at the time of dismissal, or will expire

1 within ninety (90) days after the dismissal.

2 (h) The period within which a prosecution must be commenced does  
3 not include any period in which:

4 (1) the accused person is not usually and publicly resident in  
5 Indiana or so conceals himself or herself that process cannot be  
6 served;

7 (2) the accused person conceals evidence of the offense, and  
8 evidence sufficient to charge the person with that offense is  
9 unknown to the prosecuting authority and could not have been  
10 discovered by that authority by exercise of due diligence; or

11 (3) the accused person is a person elected or appointed to office  
12 under statute or constitution, if the offense charged is theft or  
13 conversion of public funds or bribery while in public office.

14 (i) For purposes of tolling the period of limitation only, a  
15 prosecution is considered commenced on the earliest of these dates:

16 (1) The date of filing of an indictment, information, or complaint  
17 before a court having jurisdiction.

18 (2) The date of issuance of a valid arrest warrant.

19 (3) The date of arrest of the accused person by a law enforcement  
20 officer without a warrant, if the officer has authority to make the  
21 arrest.

22 (j) A prosecution is considered timely commenced for any offense  
23 to which the defendant enters a plea of guilty, notwithstanding that the  
24 period of limitation has expired.

25 **(k) The following apply to the specified offenses:**

26 **(1) A prosecution for an offense under IC 30-2-9-7(b) (misuse**  
27 **of funeral trust funds) is barred unless commenced within five**  
28 **(5) years after the date of death of the settlor (as described in**  
29 **IC 30-2-9).**

30 **(2) A prosecution for an offense under IC 30-2-10-9(b) (misuse**  
31 **of funeral trust funds) is barred unless commenced within five**  
32 **(5) years after the date of death of the settlor (as described in**  
33 **IC 30-2-10).**

34 **(3) A prosecution for an offense under IC 30-2-13-38(f)**  
35 **(misuse of funeral trust or escrow account funds) is barred**  
36 **unless commenced within five (5) years after the date of death**  
37 **of the purchaser (as defined in IC 30-2-13-9).**

38 **(l) A prosecution for an offense under IC 23-14-48-9 is barred**



1       **unless commenced within five (5) years after the earlier of the date**  
2       **on which the state:**  
3               **(1) first discovers evidence sufficient to charge the offender**  
4               **with the offense; or**  
5               **(2) could have discovered evidence sufficient to charge the**  
6               **offender with the offense by the exercise of due diligence."**  
7       Page 10, between lines 20 and 21, begin a new paragraph and insert:  
8       "SECTION 37. [EFFECTIVE JULY 1, 2009] **IC 35-41-4-2, as**  
9       **amended by this act, applies only to crimes committed after June**  
10      **30, 2009."**  
11      Renumber all SECTIONS consecutively.  
      (Reference is to HB 1287 as introduced.)

**and when so amended that said bill do pass.**

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Representative Lawson L